



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

E6
6/11/95

147813

REPLY TO THE ATTENTION OF:

JUN 01 1995

CM-29A

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stephen P. Krchma
Environmental Counsel
Monsanto Chemical Company
800 N. Lindbergh Blvd.
St. Louis, MO 63167

Michael L. Rodburg
Lowenstein, Sandler, Kohl,
Fisher & Boylan
65 Livingston Ave.
Roseland, NJ 07068-1791

Re: Cerro Copper Products Company v. Monsanto Company, Civil
Action No. 92-CV-204-WDS Protective Order

Dear Messrs. Krchma and Rodburg:

In the course of U.S. EPA's information collection activities for Sauget Area 1, you brought to our attention the existence of a Protective Order entered in federal district court to prevent disclosure of certain information and documents exchanged in the above-referenced litigation. As written, this Order protects from disclosure to third parties items marked or otherwise designated as "confidential 92-CV-204-WDS." Previously, on June 13, 1994, U.S. EPA had sent to both Cerro and Monsanto a CERCLA Section 104(e) Request for Information requesting, inter alia, materials potentially covered by this Order. U.S. EPA's initial position on the Order's applicability was to side-step the issue by excluding from production documents the parties received in the litigation through discovery.

As you know, U.S. EPA and IEPA are continuing to collect information relating to the Sauget Area sites. As part of this effort, we are now interested in reviewing information and documents (not already produced) which were generated or gathered in the course of the Cerro litigation. You will recall that these materials were specifically requested in the Section 104(e) Information Requests sent to Cerro and Monsanto on July 13, 1994. We are unclear about whether these materials fall within the Protective Order (e.g. contain confidential information), but to

the extent they do, we hereby request that you agree to waive the terms of the Protective Order as it applies to U.S. EPA and IEPA. As you know, U.S. EPA and IEPA have procedures in place to protect confidential business information ("CBI") from disclosure to third parties. In any case, we do not believe that a Protective Order of this kind can be used as a shield against U.S. EPA's statutory information collection authority.

In particular, this letter is requesting copies of discovery requests (interrogatories, requests for admission, etc.) and responses, deposition transcripts and relevant exhibits, and any other non-privileged documents, pictures, tapes and/or data generated or gathered in the course of the litigation, which provide information on or relate to waste contamination in Sauget Area 1 sites and/or information concerning the source of such contamination.

We request that the parties discuss this matter and arrange for the production of the above-referenced information and documents within 45 days of the date of this letter. To the extent documents produced contain CBI, they will be afforded full protection from further disclosure pursuant to 40 CFR Part 2, Subpart B. Please contact me at (312) 886-4273 if you have any questions concerning the content of this letter.

Sincerely,



Thomas J. Martin
Associate Regional Counsel

cc: Paul Takacs (IEPA)
William E. Coonan (AUSA)

0-4553

LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

65 LIVINGSTON AVENUE

ROSELAND, NEW JERSEY

07068-1791

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

SOMERVILLE OFFICE

TELEPHONE (908) 526-3300

FACSIMILE (908) 526-9173

June 26, 1995

LAN V. LOWENSTEIN
RICHARD M. SANDLER
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON
JOHN R. MACKAY 2ND
MARTIN R. GOODMAN
JOHN D. SCHUPPER
STEPHEN N. DERMER
MICHAEL L. RODBURG
ALLEN B. LEVITHAN
R. BARRY STIGER
GREGORY B. REILLY
PETER H. EHRENBERG
STEVEN B. FUERST
THEODORE V. WELLS, JR.
WILLIAM S. KATCHEN
MICHAEL DORE
JOHN L. KRAFT
ASHLEY STEINHART
DOUGLAS S. EAKELEY

GERALD KROVATIN
RICHARD D. WILKINSON
ALAN VOVSANIKER
KENNETH J. SLUTSKY
DAVID L. HARRIS
ZULIMA V. FARBER
WILLIAM P. MUNDAY
DANIEL J. BARKIN
GEORGE J. MAZIN
JAMES STEWART
LAURA R. KUNTZ
ROBERT D. CHESLER
RICHARD F. RICCI
JOHN L. BERGER
DAVID W. FIELD
MARTHA L. LESTER
LINDA PICKERING
JOHN D. HOGBOOM
TERRY E. THORNTON
ROBERT G. MINION
JEFFREY J. WILD
LAWRENCE M. ROLNICK

ROBERT L. KRAKOWER
NORMAN W. SPINDEL
STUART S. YUSEM
JEFFREY M. DAVIS
HARVEY SMITH
DIANE K. WEEKS
DAVID E. ALPERT
RICHARD P. BOEHMER
OF COUNSEL

PHYLLIS F. PASTERNAK
MARC B. KRAMER
GARY M. WINGENS
PAUL F. KOCH II
BRUCE S. ROSEN
DARRYL EVERETT GUGIG
SAMUEL B. SANTO, JR.
JONATHAN T. K. COHEN
SUSAN YODOVIN LEONARD
PAUL F. CARVELLI
GARY F. EISENBERG
ROSEMARY E. RAMSAY
JEFFREY B. GRACER
NEALE R. BEDROCK
KARIM G. KASPAR
ROBERT M. LAPINSKY
HENRY M. PRICE
DAVID A. THOMAS
ANDREW E. ANSELM
MICHAEL N. GOOEN
PETER E. NAHMIA
JERI L. ABRAMS
RICHARD C. SZUCH
THOMAS M. FITZGIBBON
STEPHEN R. BUCKINGHAM
STEPHANIE WILSON
VIRGINIA A. LAZALA
MICHAEL J. McDONALD
GEOFFREY A. PRICE
PETER L. SKOLNIK
NESLIHAN S. MONTAG
NANCY LAKE MARTIN
ALEX MOREAU
WILLIAM J. VONDERHEIDE
EDWARD T. ARNOLD
THOMAS E. MESEVAGE

JOYCE A. DAVIS
MICHAEL DAVID LICHTENSTEIN
BRIAN WEEKS
VERONICA SMITH LEWIS
EDWARD M. ZIMMERMAN
AMY C. GROSSMAN
RICHARD A. LEVITAN
MAUREEN E. MONTAGUE
GAVIN J. ROONEY
CHRISTOPHER L. WEISS
CHARISSE A. CARNEY
NELSON D. JOHNSON
DANIEL C. BRAUN
DAVID H. BOTTER*
EDWARD T. DARTLEY
ABBY J. AGES
KEVIN G. CORLISS
TINA MARIE NIEHOLD
SHERYL A. BERNSTEIN
DAVID J. BIANCHI
LAUREN M. HOLLENDER
PATRICK J. WHALEN
SARAH GODFREY HUNT
SARAH B. LEVINSON
COURTNEY A. SCHAEEL
DONALD G. HARRINGTON
MAUREEN A. RUANE
ELLIOT N. TURRINI
FRANK D. STEFANELLI
LYNN L. ABRAHAM
CATHERINE E. BOSTOCK
THOMAS P. COLE
MICHAEL E. GROSSMAN
JAVIER E. ROBLES
LOUISE WEINGROD
JOYCE HANAK ROGINA
MELISSA A. RULE

*NY BAR ONLY

Thomas J. Martin, Esq.
Associate Regional Counsel
United States Environmental Protection Agency, Region IV
CN 29A, 77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: Cerro Copper Products Co. v. Monsanto Company
Civil Action No. 92-CV-204-PER

Dear Mr. Martin:

We are submitting this letter in response to yours of June 1, 1995 to the undersigned and Steven P. Krchma of Monsanto. Please be advised that Cerro hereby agrees to waive the terms of the Protective Order issued in the above referenced matter as it applies to the USEPA and the IEPA and will furnish you with copies of any of the materials that you request, provided that Monsanto also agrees to this waiver. By copy of this letter, we are advising Mr. Krchma of our position and requesting that he advise us at his earliest convenience of Monsanto's position with respect to the Protective Order.

We are, of course, available should you have any questions or comments.

Very truly yours,



Michael L. Rodburg

MLR:ljc

cc: Steven P. Krchma, Esq.

4554

Jeff, Paul -

Looks like another
trip to St. Louis.

TJM
LAW DEPARTMENT

Monsanto

Please cc:
Jeff Gore West
Paul Tackas TJM

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

July 14, 1995

Via Fax/Certified Mail
Return Receipt Requested

Thomas J. Martin
Associate Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: Cerro Copper Products Company v. Monsanto Company
Civil Action No. 92-CV-204-WDS, Protective Order

Dear Mr. Martin:


In response to your correspondence on the matter referenced above dated June 1, 1995, Monsanto Company (Monsanto) will, as we discussed, make available for review the reports of its experts, as submitted in that matter, and the depositions which Monsanto took in that matter. As we discussed, this would appear to include the bulk, if not all, of the type of information which U.S. EPA is now seeking.

One difficulty which we reviewed was the logistics of making this information available for review given the September trial date for the litigation referenced above. It is presently being used intensively by Monsanto's outside counsel. In order to minimize the amount of disruption of the trial preparations and at the same time allow EPA adequate time for a review, I am in the process of obtaining information on the extent and organization of the materials. We can then discuss how best to schedule a review period so as to maximize the efficiency of the EPA review.

I will contact you next week with this information. Hopefully, we can then determine an appropriate time for review. If you

have any questions in the meanwhile, please do not hesitate to contact me.

Very truly yours,



Stephen P. Krchma
Environmental Counsel

cc: M. Rodburg

004556